

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)
)
Appellant,) District Court
)
) No. 1:05CV535
v.)
)
DONALD JAMES FRANK,) Bankruptcy Court
)
) No. 01-83748
Appellee.)

MEMORANDUM OPINION AND ORDER

OSTEEN, District Judge

This matter is before the court on appeal from an order of Bankruptcy Judge William L. Stocks sustaining in part and overruling in part an objection by Donald James Frank to a claim for unpaid taxes by the Internal Revenue Service ("IRS"). The facts are fully set forth in the Bankruptcy Court's Memorandum Opinion of March 2, 2005. Appellant United States of America challenges the portion of the Bankruptcy Court's order that reduced the amount of unpaid taxes, owed by the Continental Textile Corporation, for which Mr. Frank, as a person of authority in the corporation, was personally liable under 26 U.S.C. § 6672.¹ The Bankruptcy Court reduced the IRS's initial

¹ In relevant part, § 6672(a) states:

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who

(continued...)

claim because it concluded that, as to a portion of the tax owed, Mr. Frank's failure to cause the corporation to pay was not "willful" within the meaning of the statute. The appeal was filed in September 2005, and Appellee Frank, after receiving two extensions of time, filed his response. Appellant then requested and was granted an extension of time in which to file a reply brief but filed no reply brief.

This court reviews the Bankruptcy Court's factual findings for clear error and conclusions of law de novo. Foley & Lardner v. Biondo (In re Biondo), 180 F.3d 126, 130 (4th Cir. 1999). After considering the materials in this case, the court concludes the Bankruptcy Court's conclusions of law are correct and that the Bankruptcy Court made no clearly erroneous findings of fact. Accordingly, the order is AFFIRMED.

This the 4th day of April 2006.

William J. O'Brien
United States District Judge

¹(...continued)
willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.